IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

Bail Appl..No. 4433 of 2007()

CRIME NO.120/07 OF AMBALAPPUZHA POLICE STATION

PETITIONERS/ACCUSED

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1. S.RAJAN, S/O.SUKUMARAN, KOMANA MURIYIL, AMBALAPPUZHA, PRESIDENT, S N D P BRANCH 3715, KOMANA.

2. M.BABU, S/O.MADHAVA PANICKER, VELOM PARAMBA, KOMANA AMBALAPPUZHA, MEMBER COMMITTEE S N D P BRANCH 3715, KOMANA.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE

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1. THE SUB INSPECTOR OF POLICE, AMBALAPPUZHA POLICE STATION.

2. STATE REP; BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No.4433 OF 2007

Dated this the 6th day of August, 2007

ORDER

Application for anticipatory bail. There are two petitioners. Petitioner No.1 is the 2nd accused. Petitioner No.2 is not an accused; he is not required to be arrested, submits the learned Public Prosecutor. His claim for anticipatory bail can therefore be dismissed recording the said submission of the learned Public Prosecutor.

2. So far as the 1st petitioner is concerned, he is the President of the S.N.D.P. Sangham at Komana. The crux of the allegations is that the investors were lured into making deposits by the accused persons without any legal authority to receive such deposits. Such an establishment was run to induce persons to part with money. The 1st petitioner is the President and the co-accused is the Secretary of the said Sangham. The de facto complainant – a widow, who had lost

her son, had deposited an amount of Rs.4,60,000/- which received by her as compensation in a motor accident claim in respect of the death of her son. She had made the investment in the hope that the amount will be available for her at the time of the wedding of her daughter. The wedding is fixed. The accused persons are not returning the amount. She now realised the organised attempt of the accused to deceive her. Unable to obtain the relief from any authority, she took courage to make a complaint before the Chief Minister. The complaint to the Chief Minister has now come down and a crime has been registered. Investigation is in progress. The 1st petitioner apprehends imminent arrest.

3. The learned counsel for the petitioners submits that the 1st petitioner is absolutely innocent. According to the learned counsel, the 1st petitioner is only the President of the Sangham and the Sangham has got the requisite legal authority to conduct the financial transaction in question. The 2nd accused – the Secretary, has misappropriated the amounts due to the Sangham. He has purchased properties in his name. Active

efforts are afoot to get the properties disposed of, collect the proceeds and settle the claims to all persons to whom the amounts are due. In these circumstances, the 1st petitioner – the President of the Sangham, who is not responsible for the day-to-day functioning of the financial activity, may be spared of the trauma of undeserved arrest and detention. This is the short prayer of the learned counsel for the petitioners.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there is no bona fide attempt whatsoever to settle the disputes of the claimant/the de facto complainant and she is left in the lurch. Absolutely nothing is available yet to show that the 1st petitioner and the Sangham of which he is the President has any legal authority to carry on such a financial activity. At any rate, the learned Public Prosecutor submits that this is not a fit case where an extraordinary equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked in favour of the 1st petitioner. This petition may, in these circumstances, dismissed, it is prayed.

5. I have considered all the relevant inputs. Having

considered all the relevant circumstances, I find merit in the opposition by the learned Public Prosecutor. Absolutely nothing has been produced before this Court to show that the Sangham or the 1st petitioner has the requisite authority to conduct any financial activity as claimed. The learned Public Prosecutor asserts and the Case Diary shows that no such documents have been produced before the Investigating Officer also so far. I do not, in these circumstances, find any reason to justify the prayer for invocation of the extraordinary discretion under Sec.438 of the Cr.P.C. This, I am satisfied, is a fit case where the 1st petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and seek regular bail in the ordinary court. The documents, if any, in support of his claim can be produced before the learned Magistrate while claiming regular bail. Suffice it to say that I intend only to take the view that there is no need to invoke the powers under Sec.438 of the Cr.P.C. in favour of the 1st petitioner.

6. In the result, this petition is dismissed. The submission of the learned Public Prosecutor that the 2nd petitioner is not

made an accused and he is not required to be arrested now is recorded; but it is observed that if the 2nd petitioner were to be arrested later, the prior permission of this Court shall be taken.

7. The claim for anticipatory bail to the 1st petitioner is dismissed. Needless to say that if the 1st petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge